



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/167795

PRELIMINARY RECITALS

Pursuant to a petition filed August 06, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 01, 2015, at Janesville, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. The respondent notified the petitioner on April 16, 2015, that it would seek to recover \$523.00 in FoodShare benefits paid to her household. The petitioner appealed that decision on May 5, 2015, Division of Hearings and Appeals (DAH) case no. FOP-165833.

3. At the May 5, 2015 hearing, the petitioner withdrew her appeal on the record. A Decision was issued dismissing the petitioner's action on June 29, 2015. Petitioner's appeal rights were included in that Decision.

DISCUSSION

Federal regulations require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). The respondent notified the petitioner on April 16, 2015, that it would seek to recover \$523.00 in FoodShare benefits paid to her due to failure to report Unemployment Compensation from the State of [REDACTED]. FoodShare recipients must appeal negative decisions within 90 days of the date of the decision or the date that the decision takes effect, whichever is later. Wis. Adm. Code § HA 3.05(3). Petitioner did so, and a hearing was held on June 23, 2015. The Decision informed petitioner that she could request a rehearing within 20 days of the date of the Decision, or she could appeal to Circuit Court within 30 days of the Decision. She did neither.

Instead, petitioner filed a new appeal on the same subject matter. If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. Because she did not seek a rehearing within 20 days following the Decision, I have no jurisdiction to consider it.

I am also unable to discuss the overpayments on the merits because of claim preclusion and issue preclusion. Claim preclusion (formerly known as res judicata) requires a final judgment on the merits in a prior proceeding. See *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550. The petitioner had a chance to litigate this matter at the earlier hearing, and the ability to appeal the dismissal, but did not do so.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

THEREFORE, it is

ORDERED

That the petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of October, 2015

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 12, 2015.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability